

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

USA,

Plaintiff,

v.

JOSE INEZ GARCIA-ZARATE,

Defendant.

Case No. 17-cr-00609-VC-1

**COURT'S PROPOSED INSTRUCTION
RE UNLAWFUL POSSESSION**

Re: Dkt. No. 71

The parties should be prepared to discuss the attached jury instructions on the two possession counts at tomorrow's hearing.

IT IS SO ORDERED.

Dated: January 9, 2020


VINCE CHHABRIA
United States District Judge

Unlawful Possession as a Convicted Felon – 18 U.S.C. § 922(g)(1)

The defendant is charged in Count One with being a felon in possession of a firearm and ammunition. There are four elements to the crime. For the defendant to be found guilty, all four must be proven beyond a reasonable doubt. But only one is in dispute: whether the defendant knowingly possessed a firearm and ammunition. This element is satisfied only if you find beyond a reasonable doubt that both of the following are true:

- 1) The defendant possessed the firearm and ammunition. A person has possession of something if the person knows of its presence and has physical control of it, or knows of its presence and has the power and intention to control it.
- 2) The act of possession was done knowingly. An act is done knowingly if a person is aware of the act and does it voluntarily. An act is not done knowingly if done through ignorance, mistake, or accident. The government is not required to prove that the defendant knew that possession of a firearm was unlawful – only that he consciously possessed what he knew to be a firearm and ammunition.

The parties have entered into stipulations relevant to the remaining three elements of the crime. A stipulation is an agreement by the parties that certain facts are true, and you must take these facts as having been conclusively established.

The first remaining element is that the firearm and ammunition had previously been shipped or transported from one state to another. The parties have stipulated that the firearm in question (and the ammunition within) were manufactured outside California and traveled in interstate commerce before July 1, 2015.

The second remaining element is that when the defendant possessed the firearm and ammunition, he had been convicted of a crime punishable by imprisonment for greater than one year. The parties have stipulated that before July 1, 2015, the defendant had been convicted of a crime punishable by imprisonment for a term exceeding one year.

The third remaining element is that when the defendant possessed the firearm and

ammunition, he knew he had been convicted of a crime punishable by imprisonment for greater than one year. The parties have stipulated that on or about July 1, 2015, the defendant knew he had been convicted of a crime punishable by imprisonment for a term exceeding one year.

Unlawful Possession as an Unlawfully Present Alien – 18 U.S.C. § 922(g)(5)

The defendant is charged in Count Two with being an unlawfully present alien in possession of a firearm and ammunition. There are four elements to the crime. For the defendant to be found guilty, all four must be proven beyond a reasonable doubt. But only one is in dispute: whether the defendant knowingly possessed a firearm and ammunition. This element is satisfied only if you find beyond a reasonable doubt that both of the following are true:

- 1) The defendant possessed the firearm and ammunition. A person has possession of something if the person knows of its presence and has physical control of it, or knows of its presence and has the power and intention to control it.
- 2) The act of possession was done knowingly. An act is done knowingly if a person is aware of the act and does it voluntarily. An act is not done knowingly if done through ignorance, mistake, or accident. The government is not required to prove that the defendant knew that possession of a firearm was unlawful – only that he consciously possessed what he knew to be a firearm and ammunition.

The parties have entered into stipulations relevant to the remaining three elements of the crime. A stipulation is an agreement by the parties that certain facts are true, and you must take these facts as having been conclusively established.

The first remaining element is that the firearm and ammunition had previously been shipped or transported from one state to another. The parties have stipulated that the firearm in question (and the ammunition within) were manufactured outside California and traveled in interstate commerce before July 1, 2015.

The second remaining element is that when the defendant possessed the firearm and ammunition, he was an alien unlawfully present in the United States. The parties have stipulated that on or about July 1, 2015, the defendant was an alien present in the United States unlawfully and illegally.

The third remaining element is that when the defendant possessed the firearm and

ammunition, he knew he was an alien unlawfully present in the United States. The parties have stipulated that on or about July 1, 2015, the defendant knew he was an alien who was present in the United States unlawfully and illegally.